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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, pursuant to Council resolution 25/13.

In his report, the Special Rapporteur gives an overview of the activities of the mandate during the reporting cycle, including the country visits carried out by the former Special Rapporteur, Juan Méndez, up to the end of his tenure on 31 October 2016. The incumbent Special Rapporteur, who took up his appointment on 1 November, outlines his working methods, his thematic priorities and his vision for a meaningful anti-torture advocacy, in close cooperation with existing mechanisms.

* The present document was submitted late to reflect most recent developments.

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Contents

		Page
I.	Introduction	3
II.	Activities relating to the mandate	3
III.	Methodology of the Special Rapporteur	4
IV.	Thematic priorities	6
	A. Reaffirmation, clarification, promotion and development of normative standards	6
	B. Torture and other cruel, inhuman or degrading treatment or punishment in police custody and pretrial detention	8
	C. Migration-related torture and ill-treatment	9
	D. Extra-custodial use of force	10
	E. Torture and ill-treatment by non-State actors	11
V.	Conclusions	12

I. Introduction

1. The present report has been prepared pursuant to Human Rights Council resolution 25/13. In an addendum (A/HRC/34/54/Add.3), the Special Rapporteur, who took up his post on 1 November 2016, presents observations made by his predecessor on cases sent to Governments between 1 December 2015 and 31 August 2016.

II. Activities relating to the mandate

1. Activities carried out by the former mandate holder

2. From 25 January to 3 February 2016, the Special Rapporteur conducted a fact-finding visit to Mauritania. His findings are presented as an addendum to the present report (A/HRC/34/54/Add.1).

3. From 29 April to 7 May, the Special Rapporteur conducted a joint fact-finding visit to Sri Lanka with the Special Rapporteur on the independence of judges and lawyers. The visit provided a unique opportunity to examine the steps taken towards the implementation of Human Rights Council resolution 30/1 on promoting reconciliation, accountability and human rights in Sri Lanka. His findings are presented as an addendum to the present report (A/HRC/34/54/Add.2).

4. The former Special Rapporteur regretted that his requests for follow-up visits to Mexico and Morocco were not granted. He was unable to conduct a full-fledged follow-up visit to Kyrgyzstan, owing to time constraints. His follow-up report on Mexico is presented as an addendum to the present report (A/HRC/34/54/Add.4).

2. Activities carried out by the current mandate holder

5. On 7 and 8 November 2016, the Special Rapporteur held a series of meetings in Geneva with a view to increasing cooperation and synergies with existing United Nations anti-torture mechanisms from the outset of his tenure. He met with staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR) supporting the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Voluntary Fund for Victims of Torture. He also participated in a private plenary meeting with members of the Committee against Torture. The Special Rapporteur met with representatives of permanent missions in Geneva and held a consultation with a large group of Geneva-based civil society organizations active in the fight against torture.

6. On 17 November, the Special Rapporteur participated in the event marking the tenth anniversary of the adoption of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, held in Geneva. He delivered a statement on the triangular relationships between the Optional Protocol, national preventive mechanisms and his mandate.

7. On 24 November, the Special Rapporteur gave a keynote address at the thirtieth anniversary forum of the World Organisation Against Torture, held in Geneva, giving particular emphasis to the vital role of local anti-torture organizations in the fight against torture.

8. From 28 November to 2 December, the Special Rapporteur conducted his first fact-finding visit, to Turkey. He expresses his sincere appreciation to the Government of Turkey for the invitation and for the excellent cooperation extended to him and his team throughout the mission. At the end of his official visit, the Special Rapporteur welcomed the

authorities' unequivocal commitment to a zero-tolerance policy on torture, but also expressed concern about the significant disconnect between policy and reality. Most notably, he observed that the sweeping security measures taken by the Government in response to the failed coup d'état of 15 July seemed to have resulted in a general sense of intimidation and distrust among many segments of the population, which prevented not only detained persons and their families but also lawyers and doctors and other members of civil society from initiating or participating in any procedure that might be perceived — rightly or wrongly — as opposing or criticizing the Government and its officials, including complaints of or investigations into allegations of torture or other forms of ill-treatment.

9. The Special Rapporteur also observed that some recently adopted legislation and statutory decrees had created an environment conducive to torture and other forms of ill-treatment. These included the extension of the period of custody without judicial review to 30 days, the extension of the period without access to a lawyer to five days, the denial of confidential exchange between inmates suspected of terrorist crimes and their lawyers, and the introduction of — albeit overturnable — immunity from criminal prosecution for forces conducting counter-terrorist operations in the south-east.

10. In view of the various concurrent crises in the country, the Special Rapporteur expressed his sincere solidarity with all segments of the population of Turkey and fully recognized the Government's right to protect its citizens and institutions through extraordinary measures. However, he also reminded the authorities that expedient access to lawyers and judicial review were indispensable for the prevention of torture and other forms of ill-treatment. He therefore appealed to the Government to publicly reinforce its zero-tolerance policy on torture and, in particular, to unequivocally make clear to State officials at all levels that they were expected and, indeed, obliged to report and investigate all allegations of torture and to bring perpetrators to justice.

11. The preliminary observations on the visit can be consulted on the OHCHR website;[1] a full report will be presented to the Human Rights Council at its thirty-seventh session.

III. Methodology of the Special Rapporteur

12. The Special Rapporteur wishes to express his sincere acknowledgement of and gratitude for the outstanding work accomplished by his predecessors since the establishment of the mandate in 1985. Throughout his tenure, he intends to consolidate and build on their achievements, pursuant to Human Rights Council resolution 25/13 and in accordance with the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council and the Manual of Operations of the Special Procedures of the Human Rights Council. The Special Rapporteur acknowledges that the mandate is part of a wider system, and wishes to continue to work in close cooperation with the Committee against Torture, the Subcommittee on Prevention of Torture, the United Nations Voluntary Fund for Victims of Torture and other special procedure mandate holders as well as with regional anti-torture mechanisms, States and civil society actors. He intends to ensure that the synergies between the guardians of the protection against torture are not only preserved but, if possible, developed even further.

13. In the course of the past three decades, the mandate has contributed significantly to the steady development, expansion and consolidation of an impressive institutional and normative anti-torture framework. This includes, most notably, the growth of a tightly knit treaty-based system including the Convention against Torture and Other Cruel, Inhuman or

[1] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20976&LangID=E.

Degrading Treatment or Punishment and the Committee against Torture, the Optional Protocol to the Convention and the Subcommittee, national preventive mechanisms in various countries as well as the United Nations Voluntary Fund for Victims of Torture. It also includes the development of standard-setting instruments such as the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the Istanbul Protocol), the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the International Code of Conduct for Private Security Service Providers. It further includes the establishment of a plethora of courageous, competent and effective civil society organizations and, not least, an incessant stream of judicial decisions and resolutions adopted by universal and regional bodies unequivocally condemning any form of torture and other cruel, inhuman or degrading treatment or punishment.

14. At the same time, the Special Rapporteur cannot ignore a troubling discrepancy between, on the one hand, the professed consensus opinions, solemn declarations and commitments made by States at the diplomatic level and, on the other hand, the disillusioning reality of millions of victims of torture and other cruel, inhuman or degrading treatment or punishment. Despite more than three decades of dedicated work of the mandate and countless other international, governmental and non-governmental stakeholders, torture and other cruel, inhuman or degrading treatment or punishment are still rampant in most, if not all, parts of the world. The Special Rapporteur observes with alarm that, since the turn of the century, the rise of transnational terrorism, organized crime and other actual or perceived threats has given way to an increasing tolerance of violent political narratives and popular beliefs that not only trivialize torture and other cruel, inhuman or degrading treatment or punishment, but even promote and incite their use in the name of national security and the fight against terrorism.

15. The Special Rapporteur feels compelled to recall that today, after a century marked by two world wars and some of the most outrageous atrocities in human history, thousands of prisoners, war victims, migrants and other vulnerable men, women and children are still being abused, exploited, murdered or simply left to die every day in a no man's land of indifference; that there are still States openly practising or advocating interrogation methods based on the infliction of excruciating pain and anguish and on the irreparable destruction of human beings; that there are still Governments finding no fault in sacrificing justice for political convenience by choosing not to prosecute officials suspected or known to have resorted to, ordered, justified or enabled the use of torture and other cruel, inhuman or degrading treatment or punishment; and that a growing number of States are refusing to subject their citizens to international criminal jurisdiction even for the most barbarous of international crimes.

16. In the view of the Special Rapporteur, the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment may well constitute the most fundamental achievement of mankind, and any tolerance, complacency or acquiescence in such practices, however exceptional and well argued, will inevitably lead down a slippery slope towards complete arbitrariness and brute force, a disgrace for all of humanity. During his tenure, therefore, the primary focus of the Special Rapporteur will be to unequivocally reaffirm the absolute and universal prohibition of all, and any, forms of torture and other cruel, inhuman or degrading treatment or punishment; to further clarify the contours and meaning of these terms in the light of the evolving challenges marking the contemporary international environment; and to call on State and non-State actors alike to renounce, and to prevent impunity for, any such practices. The Special Rapporteur intends to complement

these efforts with reports on certain thematic focus areas relevant to the mandate, some of which are outlined below.

17. In carrying out his mandate, the Special Rapporteur will always endeavour to engage in an open, respectful and constructive dialogue with States and other international, regional and non-governmental stakeholders and aim to gain a consolidated understanding of all relevant perspectives, concerns and challenges before drawing any conclusions or trying to identify the most suitable manner of action.

IV. Thematic priorities

A. Reaffirmation, clarification, promotion and development of normative standards

1. Reaffirming the absolute nature of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment

18. The absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is a core principle of international law. The legal framework around this subject matter is one of the most developed in international human rights law, and the particular atrocity of torture is reflected in the distinct position its prohibition takes in international law. Acts of torture and other ill-treatment are not only prohibited as a matter of universal and regional treaty law, but the prohibition is also a norm of customary international law and is considered to have the rare status of a peremptory norm of international law (*jus cogens*).

19. The prohibition of torture is absolute and non-derogable, meaning that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture".[2] The prohibition of torture must not be limited or balanced against any other right or concern, and States are not permitted to derogate from their obligations even in times of emergency or armed conflict (see A/HRC/13/39/Add.5, paras. 41-42). Likewise, the prohibition of cruel, inhuman or degrading treatment or punishment is considered to be non-derogable and, therefore, must be observed in all circumstances.[3] The gravity of torture also finds expression in the attendant obligations on States to adopt effective legislative, administrative, judicial and/or other measures to prevent acts of torture or other ill-treatment in any territory under their jurisdiction,[4] the obligation to criminalize acts of torture,[5] and the customary international law obligation to investigate, prosecute and punish all acts of torture and other ill-treatment as codified, inter alia, in the Convention.[6]

20. While the legal framework around torture is uniquely developed, the Special Rapporteur is of the view that certain terms relating to the prohibition of torture that are relied upon require reaffirmation and clarification. For example, while the Convention expressly defines torture in its article 1 (1), no such definition exists of "other cruel,

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[2] Convention against Torture, art. 2 (2).

[3] Committee against Torture, general comment No. 2 (2008) on the implementation of article 2, paras. 3 and 6.

[4] Convention against Torture, arts. 2 (1) and 16. See also Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 8.

[5] Convention against Torture, art. 4.

[6] Ibid., art. 12.

inhuman or degrading treatment or punishment" as a whole, or of its separate elements. A former Special Rapporteur has argued that "the distinguishing factor is not the intensity of the suffering inflicted, but rather the purpose of the conduct, the intention of the perpetrator and the powerlessness of the victim" (see A/HRC/13/39, para. 60). Thus, based on the work undertaken by his predecessors, the Special Rapporteur will aim to further illuminate and interpret the exact parameters and obligations surrounding the absolute prohibition of torture. With a view to contributing to the doctrine on the prohibition of cruel, inhuman or degrading treatment or punishment, the Special Rapporteur will also endeavour to further clarify the criteria and thresholds rendering a particular treatment or punishment "cruel", "inhuman" or "degrading". In doing so, the Special Rapporteur will aim to ensure that the protection space offered to victims of torture and other ill-treatment remains adequate in the light of the fast-evolving challenges marking the contemporary international environment.

2. Promoting treaty participation and soft law standards

21. In all his endeavours, the Special Rapporteur will promote adherence to, and ratification of, core relevant human rights treaties. At the same time, the Special Rapporteur will also promote so-called soft-law standards such as, but not limited to, the Nelson Mandela Rules, the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, the Bangkok Rules, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and other relevant instruments. Ultimately, the Special Rapporteur will prioritize results-based pragmatism rather than formalism without, however, compromising on applicable norms, terms and standards. Therefore, the primary focus of the Special Rapporteur will not necessarily be to achieve universal ratification of relevant treaties, but rather to advocate for the implementation, in actual practice, of norms, procedures and mechanisms for the effective prevention of torture or other cruel, inhuman or degrading treatment or punishment.

3. Strengthening the Istanbul Protocol

22. The Istanbul Protocol is the first set of international guidelines for the forensic investigation and documentation of torture. It sets standards and procedures for the assessment of persons who allege to have been subjected to torture and other forms of ill-treatment, for investigation of alleged torture cases and for reporting such findings to the judiciary and other investigative bodies.

23. The Istanbul Protocol was developed in the span of three years of analysis, research and drafting undertaken by more than 75 forensic physicians, psychologists, human rights monitors and lawyers representing 40 organizations and institutions from 15 countries. It became an official United Nations publication in 1999.

24. The Istanbul Protocol is a uniquely and fundamentally important tool for the prevention of torture and other ill-treatment around the world. Discussions have started in recent years about how to strengthen and enhance the Protocol to better support torture victims' pursuit of justice.

25. An initial stocktaking and risk-assessment process was thus launched in 2016 by several civil society organizations that have been working with the Istanbul Protocol in practice. The Special Rapporteur on torture, as one of the four core United Nations mechanisms dedicated to eradicating torture, will actively contribute to this review process in the coming years. The stocktaking exercise aims to assess the current global experience with using and implementing the Istanbul Protocol and to identify obstacles and possibilities for strengthening its use.

B. Torture and other cruel, inhuman or degrading treatment or punishment in police custody and pretrial detention

1. Promoting non-coercive interviewing practices

26. Law enforcement officers and officials from other investigative bodies are obliged to respect and protect the inherent dignity and physical and mental integrity of all persons, including suspects, witnesses and victims. Nevertheless, the use of torture, other ill-treatment, coercion and intimidation against persons in custody and during interviews continues unabated in most if not all regions of the world. This is so not only despite the universal and absolute prohibition of such practices, but also despite scientific and historical evidence that abusive and coercive techniques elicit unreliable information and have adverse operational, institutional and public safety consequences.

27. The Special Rapporteur welcomes the proposal put forward by his predecessor in his last report to the General Assembly (A/71/298) in which he advocated for the development of universal guidelines for investigative interviewing practices. These would be grounded in fundamental principles of international human rights law and would identify a set of standards for non-coercive interviewing methods and procedural safeguards that ought, as a matter of law and policy, to be applied at a minimum to all interviews by law enforcement officials, military and intelligence personnel and other bodies with investigative mandates.

28. The Special Rapporteur proposed that the first step in the development of universal guidelines on investigative interviewing would be to hold a broad public consultation. In parallel, OHCHR was tasked by the Human Rights Council, in its resolution 31/31, to organize an intersessional seminar to exchange national experiences and best practices on the implementation of effective safeguards to prevent torture and other ill-treatment during police custody.

29. The Special Rapporteur intends to take the work of his predecessor a step further and commits to contribute actively, in consultation and cooperation with other stakeholders, to the development of universal guidelines on investigative interviewing.

2. Conditions of treatment and detention

30. International law requires that States guarantee the effective protection of persons at risk of torture and ill-treatment, in particular persons deprived of their liberty who are under the complete control of the detaining authorities.[7] Indeed, arrest and deprivation of liberty are inherently associated with a risk of intimidation, torture and other ill-treatment,[8] and experience shows that this risk is especially high in the very early stages of custody and detention. At times, initial police custody or remand detention is extended beyond the legally permissible period, thus making the detained individual particularly vulnerable to abuse. Moreover, while the physical and psychological conditions of detention in police custody may be acceptable for periods up to 48 hours, they often are completely inadequate for housing persons for any longer periods.

31. Procedural safeguards have been developed to counter the risk of torture and other cruel, inhuman or degrading treatment or punishment, and their implementation is key to eradicating such abuse in practice (see A/HRC/13/39/Add.5, para. 81). Among the most basic but important safeguards is the immediate and adequate registration of any arrest and

[7] Committee against Torture, General comment No. 2, para. 13; Human Rights Committee, general comment No. 20, paras. 10-11.

[8] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 12th General Report, 3 September 2002, para. 33.

detention, as well as the prohibition on holding anyone in unofficial places of detention. Other guarantees include the detainees' right to have prompt access to independent legal counsel and medical assistance and to have their families notified of their arrest. In addition, each individual has the right to challenge the legality of his/her detention and treatment before an independent court.[9] There must be formal procedures by which a detainee is informed of his/her rights, so as to enable him/her to enjoy those rights.

32. The Special Rapporteur is interested in conducting a global survey on how States implement such safeguards. He will actively cooperate with Governments during his tenure to identify challenges and best practices and to encourage States to live up to their obligations to fully implement relevant safeguards in order to make detainees' rights a reality rather than an aspiration.

C. Migration-related torture and ill-treatment

33. Conflicts, violence, persecution, poverty and food insecurity are driving unprecedented waves of people to cross international borders in a desperate search for safety. According to the Office of the United Nations High Commissioner for Refugees, in 2015 alone, 65.3 million individuals were forcibly displaced worldwide, the largest number since the Second World War.[10]

34. This rise in the number of forced displacements is paralleled by a growing and worrying tendency around the world to criminalize irregular migration, to deter applications for asylum and to detain people on the move. In this context, refugees, asylum seekers and other irregular migrants have become more vulnerable to human rights violations, including torture and other cruel, inhuman or degrading treatment or punishment.

35. In this context, the Special Rapporteur intends to look with a renewed degree of scrutiny into the particular risks of torture and other cruel, inhuman or degrading treatment or punishment faced by irregular migrants in today's world. He will do so keeping in mind the New York Declaration for Refugees and Migrants, adopted by the General Assembly on 19 September 2016, in which States committed to protect the human rights of all refugees and migrants.

1. Detention of migrants and refugees

36. Of particular interest to the Special Rapporteur's mandate will be the use by many, if not all, Governments of detention as a migration management tool in arrival, transit and removal centres. During his fact-finding visits, the Special Rapporteur intends to visit places where irregular migrants are held with a view to ensuring that they are not subjected to treatment and conditions of detention amounting to torture or other cruel, inhuman or degrading treatment or punishment. The Special Rapporteur is of the view that monitoring both official and de facto places of detention where irregular migrants are held would be instrumental for assisting authorities in addressing possible cases of abuse and improving the conditions of life of this population.

2. Non-refoulement

37. The Special Rapporteur will also closely monitor the conditions under which some irregular migrants, including asylum seekers and refugees, are being returned to their

[9] Committee against Torture, general comment No. 2, para. 13; Human Rights Committee, general comment No. 20, para. 11.

[10] See www.unhcr.org/576408cd7.pdf.

countries of origin or relocated to countries of transit under readmission agreements negotiated with countries that may have committed gross human rights violations, including torture. In doing so, the Special Rapporteur will advocate for the full application of article 3 of the Convention, which provides that no State party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture, and that for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

38. The Special Rapporteur fully endorses the long-standing jurisprudence and doctrine stating that the absolute prohibition against refoulement contained in the Convention against Torture is stronger than that found in refugee law under article 33 of the 1951 Convention relating to the Status of Refugees. This absolute prohibition means that persons may not be returned even when they may not otherwise qualify for refugee status under the 1951 Convention or domestic law. Accordingly, non-refoulement under the Convention against Torture must be assessed independently of refugee or asylee status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.[11]

39. Finally, the Special Rapporteur is also interested in researching how to better assist States in preventing and investigating acts of torture and other ill-treatment suffered by refugees, asylum seekers and other irregular migrants at the hands of non-State actors such as traffickers and smugglers.

40. The Special Rapporteur intends to contribute to the ongoing reflection on the links between forced migration and torture. To this end, he hopes to conduct consultations with relevant stakeholders with a view to preparing a thematic report addressing the specific issue of torture and ill-treatment faced by migrants and refugees. Through this report, the Special Rapporteur hopes to contribute to the overall efforts of the international community towards the adoption of a global compact for safe, orderly and regular migration by 2018.

D. Extra-custodial use of force

41. In the past, the attention of the mandate has focused predominantly on fighting the use of torture and other cruel, inhuman or degrading treatment or punishment against persons deprived of their liberty. It has not yet systematically examined the extent to which the use of force by law enforcement officers and other officials outside the context of detention (so-called extra-custodial use of force) can come within the purview of the mandate. The question is particularly relevant where State officials resort to unnecessary, disproportionate or otherwise excessive force without, however, directly infringing the right to life. While it is clear that States must be in a position to use all appropriate means, including necessary and proportionate force, with a view to maintaining public security and law and order, experience shows that it is precisely in situations where force is used in insufficiently controlled environments that the risk of arbitrariness and abuse is highest.

42. The Special Rapporteur therefore aims to clarify how terms such as "torture", "cruel", "inhuman" and "degrading" should be interpreted within the context of extra-custodial use of force, particularly in view of potential justifications such as law enforcement, crowd control, or self-defence or defence of others. He will also examine how this subject area interrelates with the protection of other fundamental rights such as, most

[11] Human Rights Committee, general comment No. 20, para. 9. See also paragraph 7 of General Assembly resolution 70/146 and Human Rights Council resolution 16/23.

notably, the right of peaceful assembly, freedom of expression and the right to life. Further, the Special Rapporteur plans to examine the extent to which the use of certain types of weapons, riot control devices or other means and methods of law enforcement would have to be considered intrinsically cruel, inhuman or degrading in the light of their immediate to long-term consequences.

43. In interpreting the relevant legal provisions, the Special Rapporteur will be guided, among other sources, by State practice, international jurisprudence and two soft law instruments widely recognized to reflect generally recognized conditions and modalities governing the use of force by law enforcement officials: the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The Special Rapporteur intends to conduct his thematic work in this area based on consultations and expert meetings with relevant stakeholders and experts, and building on earlier analyses by other special procedure mandate holders who explored similar issues.[12]

E. Torture and ill-treatment by non-State actors

44. So far, steps taken by the mandate to combat torture have focused almost entirely on States as potential perpetrators. Yet organized armed groups, private military and security contractors, mercenaries, foreign fighters and other non-State actors are increasingly engaged in conduct that adversely interferes with human rights, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. For the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment to retain its practical relevance, however, it must also provide for practical protection against violations on the part of non-State actors.

45. This focus area raises questions of the due diligence of States as well as, to a certain extent, of the direct obligations of non-State actors as far as the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is concerned. It should be recalled that, although non-State actors are not directly bound by human rights treaties, there are other treaty provisions prohibiting torture and other cruel, inhuman or degrading treatment or punishment that may be directly binding on them. Most notably, under international humanitarian law, both States and non-State actors are absolutely prohibited from resorting to torture and other cruel, inhuman or degrading treatment or punishment for reasons related to an armed conflict. Moreover, any person resorting to torture or other cruel, inhuman or degrading treatment or punishment amounting to a war crime, a crime against humanity, or even genocide is subject to prosecution under international criminal law. Arguably, the universal prohibition of torture and other cruel, inhuman or degrading treatment or punishment can also be based on a general principle of law, namely what the International Court of Justice referred to as "elementary considerations of humanity". According to article 38 of the Statute of the International Court of Justice, such general principles of law constitute an independent source of international law along with treaties and custom.

46. As far as the due diligence of territorial States is concerned, the Special Rapporteur is of the view that the exercise of control by an organized armed group as de facto authority over the population of a State does not deprive the people living in this territory of their rights.[13] States therefore have a due diligence obligation to protect individuals under their jurisdiction from cruel, inhuman or degrading treatment or punishment on the part of non-

[12] As contained, for example, in documents A/66/330, A/HRC/17/28, A/HRC/26/36 and A/HRC/31/66.
[13] Human Rights Committee, general comment No. 26 (1997) on the continuity of obligations.

State actors. Thus, even where armed groups have brought part of the national territory under their control, Governments are not absolved from doing everything feasible in the circumstances to protect their citizens from torture and ill-treatment.

47. In addition, an increasing number of States delegate part of their law enforcement, intelligence and military operations to private military or security companies. Outsourced tasks and functions may range from the protection of specific persons, objects and infrastructure to running facilities for the processing of asylum seekers or even entire detention facilities for criminal suspects and convicts, and may even include the use of force. In this environment, allegations of individual contractors' involvement in serious human rights violations — including participation in torture and other cruel, inhuman or degrading treatment or punishment — continue to emerge. It is therefore important to recall that States cannot absolve themselves from international legal responsibility for acts of torture and other cruel, inhuman or degrading treatment or punishment carried out by private military or security contractors operating on their behalf.

48. In sum, the Special Rapporteur is of the view that international law must protect every human being from torture and other cruel, inhuman or degrading treatment or punishment, whoever the perpetrators may be. Throughout his tenure, the Special Rapporteur will therefore aim to contribute to closing the protection gap for victims of torture and other cruel, inhuman or degrading treatment or punishment at the hands of non-State actors, including by advocating for the mutual reinforcement of human rights and international humanitarian law obligations. In carrying out his mandate, the Special Rapporteur is also willing to explore, to the extent appropriate and practicable, the benefits of engaging in a direct dialogue with non-State actors, including de facto authorities, other armed groups and private companies, to achieve a positive impact on the ground. The Special Rapporteur will also endeavour to further contribute to the ongoing discussions on holding non-State actors accountable for human rights violations, including for acts of torture and other cruel, inhuman or degrading treatment or punishment.

V. Conclusions

49. **The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sincerely thanks the Human Rights Council for the confidence in him demonstrated by his nomination. He is aware of the great responsibility of his office and is fully committed to carrying it out to the best of his ability and for the benefit of humanity as a whole.**

50. **The Special Rapporteur acknowledges that the mandate is part of a wider system and looks forward to working in close cooperation with the Committee against Torture, the Subcommittee on Prevention of Torture, the United Nations Voluntary Fund for Victims of Torture, other special procedure mandate holders, regional anti-torture mechanisms, States and civil society actors.**

51. **The Special Rapporteur also wishes to salute the outstanding work accomplished by his predecessors since the establishment of the mandate in 1985. He intends to consolidate and build on their achievements throughout his tenure.**

52. **At the same time, the Special Rapporteur cannot ignore that, despite more than three decades of dedicated work of the mandate and countless other international, governmental and non-governmental stakeholders, torture and other cruel, inhuman or degrading treatment or punishment are still rampant in most, if not all, parts of the world. In particular, the Special Rapporteur observes with alarm that, since the turn of the century, the rise of transnational terrorism, organized crime and other actual or perceived threats has given way to an increasing tolerance for violent political**

narratives and popular beliefs that not only trivialize torture and other cruel, inhuman or degrading treatment or punishment but even promote and incite their use in the name of national security and the fight against terrorism.

53. Therefore, the first priority of the Special Rapporteur will be to unequivocally reaffirm the absolute and universal prohibition of all, and any, forms of torture and other cruel, inhuman or degrading treatment or punishment, to further clarify the contours and meaning of these terms in the light of the evolving challenges marking the contemporary international environment, and to call on States and non-State actors alike to renounce, and to prevent impunity for, any such practice.

54. Throughout his tenure, the Special Rapporteur intends to continue some of the thematic work streams initiated by his predecessors, such as the envisaged protocol on non-coercive interviewing and other issues arising in the area of police custody and pretrial detention. Furthermore, the Special Rapporteur will also endeavour to widen the protection space for victims of torture and other cruel, inhuman or degrading treatment or punishment. To that end, he intends to take up a number of issues that have not yet received systematic attention from the international community, such as torture and other cruel, inhuman or degrading treatment or punishment occurring in relation to forced migration, in extra-custodial settings and at the hands of non-State actors.

55. The Special Rapporteur is of the firm view that there is no better deterrent to torture than a strong national will to combat and prevent such abhorrent abuse. In addition to visiting places of detention, therefore, the Special Rapporteur will use the opportunity of fact-finding visits to encourage States to take effective legislative, administrative and judicial measures to prevent torture. In particular, wherever necessary, the Special Rapporteur will call upon States to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto and to establish independent and professional national preventive mechanisms.

56. In carrying out his mandate, the Special Rapporteur will always endeavour to engage in an open, respectful and constructive dialogue with States and other international, regional and non-governmental stakeholders, and aim to gain mutual trust and consolidated understanding of all relevant perspectives, concerns and challenges before drawing any conclusions or trying to identify the most suitable manner of action.

57. The Special Rapporteur considers it an absolute priority of the mandate to continue transmitting urgent appeals to States with regard to individuals reported to be at risk of torture, as well as communications on past alleged cases of torture. However, having recently taken up his functions, the Special Rapporteur notes with serious concern that the resources allocated to the mandate are not sufficient to respond to the ever-growing number of urgent requests for intervention on behalf of individuals. The Special Rapporteur therefore appeals to the Human Rights Council, as well as to its members individually, to take every possible measure to allow the Special Rapporteur to carry out the mandate effectively.